

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 850 - HB 951

March 2, 2015

SUMMARY OF BILL: Requires local governments, prior to the adoption of any hotel occupancy taxes, to conduct a study to determine the economic effect of such an action. Requires the study to be preceded by public notice in a newspaper of general circulation, written notice to the county or city covered but not making the proposal, and at least a 30-day period for the public to review such study after it is published and submit comments to the adopting body prior to the adoption of an ordinance. Requires at least 80 percent of the proceeds of any tax or expansion of the tax adopted after the effective date of this act to be spent in the promotion of tourism or tourism development. Redefines “transient” to mean any person who exercises occupancy or is entitled to occupancy for any rooms, lodgings or accommodations in a hotel for a period of less than 90 days, instead of 30 days. Specifies that as part of the audit conducted by the Office of the Comptroller, and within the normal cost of the audit, the collection and use of any occupancy tax levied will be subject to audit. Prohibits any hotel occupancy taxes or increases in existing hotel occupancy taxes from being adopted by a private act, after the effective date of this act.

ESTIMATED FISCAL IMPACT:

Other Fiscal Impact – The proposed legislation will prohibit certain local government units, those chartered by private act, from increasing or imposing any new hotel occupancy tax rates after the effective date of this act, resulting in potentially forgone revenue for those local units. Further, requiring studies to be done and time to be granted for the public to submit their comments prior to the adoption of, or an increase to, tax rates for other local governments could result in such governments forgoing any increases in future tax revenue. However, extending the taxable base for certain local governments, by applying the tax to continuous hotel occupancies of fewer than 90 days, instead of 30 days, is estimated to result in a recurring increase in local government revenue. Due to multiple unknown factors, the magnitude of any such change and the net impact of the proposed legislation on local government revenue cannot be quantified with reasonable certainty.

Assumptions regarding home rule municipalities:

- Pursuant to Tenn. Code Ann. § 67-4-1402, home rule municipalities are authorized to levy by ordinance a hotel occupancy tax, in an amount not to exceed five percent of the consideration charged by the operator. The tax applies to hotel occupancies of fewer than 30 continuous days. The proceeds from the tax received by a home rule

municipality shall be designated and used for purposes authorized in the ordinance levying the tax.

- There are approximately eight home rule municipalities that currently impose a hotel occupancy tax. The average tax rate is estimated to be 3.25 percent.
- The proposed legislation requires home rule municipalities to, prior to the adoption of any hotel occupancy tax, conduct a study to determine the economic effect of such an action, issue a public notice, and allow at least a 30-day period for the public to review such study and submit comments.
- It further specifies that any such tax shall be imposed on hotel occupancies of fewer than 90 continuous days, instead of 30 continuous days. Finally, it requires that at least 80 percent of the proceeds of any tax or expansion of the tax adopted after the effective date of this act is spent in the promotion of tourism or tourism development.
- While requiring the study to be conducted, public notices to be issued, and a 30-day period for public comments to be granted, prior to the adoption of any hotel occupancy tax, could result in certain home rule municipalities not adopting the tax (or adopt it at a lower rate than originally intended) and forgo an increase in local revenue, extending the tax base on continuous occupancies of less than 90 days, instead of 30 days, is anticipated to result in a permissive increase in local revenue. Due to many unknown factors, the magnitude of such changes and the resulting impact on home rule municipalities' revenue cannot be quantified with reasonable certainty.

Assumptions regarding private act municipalities and counties:

- Pursuant to Tenn. Code Ann. § 67-4-1425, private act municipalities are prohibited, with certain exceptions, from imposing a hotel occupancy tax, if a county where the municipality is located already levies the tax. However, if a private act municipality has already enacted a hotel occupancy tax, the county in which such a municipality is located may impose the tax only outside that municipality. The rate of any such tax imposed is not limited.
- There are approximately 40 private act municipalities and 76 counties that currently impose a hotel occupancy tax. The average tax rate imposed by such municipalities is estimated to be 4.64 percent; the average tax rate imposed by the counties is estimated to be 4.79 percent.
- The proposed legislation will prohibit any hotel occupancy taxes or increases in existing hotel occupancy taxes from being adopted by a private act, after the effective date of this act. This prohibition will result in the affected municipalities and counties forgoing any future increases in local government revenue. However, due to many unknown factors, such as the number of municipalities and counties that would increase or newly adopt the hotel occupancy tax under current law, the rate of such increases or new tax adoptions, and the taxable base for such counties and municipalities, the exact amount of any forgone local government revenue cannot be quantified with reasonable certainty.

Assumptions regarding other impacts:

- Municipalities incorporated under the general law may levy the tax by ordinance passed by a two-thirds vote of the governing body, however any such tax rate shall not exceed five percent of the consideration charged by the operator.
- Counties with a metropolitan form of government are also authorized to levy a hotel occupancy tax, not to exceed five percent of the consideration charged by the operator, with certain exceptions.
- There are approximately 10 general law municipalities and 2 counties with a metropolitan form of government that currently impose a hotel occupancy tax. The average tax rate imposed by such municipalities is estimated to be 3.58 percent; the average tax rate imposed by the counties is estimated to be 4.50 percent.
- Similarly to the impact on home rule municipalities, the proposed legislation could result in these municipalities forgoing an increase in local revenue, if they elect to not adopt a proposed tax (or adopt it at a lower rate than originally intended) after the required study is conducted and public comments are submitted. However, extending the taxable base is anticipated to result in a permissive increase in local revenue for such municipalities. Due to many unknown factors, the magnitude of such changes and the resulting impact on home rule municipalities' revenue cannot be quantified with reasonable certainty.
- Any increase in state or local government expenditures to conduct the required studies, issue public notices, and to audit the collection and use of any occupancy tax levied is estimated to be not significant. The required audits of any occupancy tax levied will not be conducted at a level that exceeds generally accepted standards for government audits.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Jeffrey L. Spalding, Executive Director

/bos